UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/51/275/Add.1
12 September 1996
ENGLISH
ORIGINAL: FRENCH

Fifty-first session
Item 146 of the provisional agenda*

CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

Draft articles on the law of the non-navigational uses of international watercourses and resolution on confined transboundary groundwater

Report of the Secretary-General

Addendum

CONTENTS

		Page
II.	COMMENTS AND OBSERVATIONS RECEIVED FROM STATES	3
	A. General comments and observations on the draft	
	Italy	3
	...	
	C. Comments and observations relating to specific articles	
	Article 7. Obligation not to cause harm	
	Niger	4

* A/51/150.

96-24414 (E) 021096 021096 031096

/...

CONTENTS (continued)

Page

Article 9. General obligation to cooperate

Niger 4

Article 17. Consultations and negotiations concerning planned measures

Niger 5

Article 19. Urgent implementation of planned measures

Niger 5

Article 26. Installations

Niger 5

II. COMMENTS AND OBSERVATIONS RECEIVED FROM STATES

A. General comments and observations on the draft

ITALY

[9 September 1996]

1. The draft prepared by the International Law Commission and adopted by the Commission at its forty-sixth session represents an important and constructive effort to regulate a matter which is undeniably both complex and delicate. We agree with the concept of an "international watercourse" that can be deduced from the combination of subparagraphs (a) and (b) of article 2, which is the outcome of careful drafting by the Commission.

2. The agreement has the characteristics of a framework agreement which in no way precludes the conclusion of application agreements aimed at solving specific problems and creating the most appropriate rules for the various contexts concerned. The agreement seeks to define a number of principles and criteria that are to be taken as basic rules and transposed into application agreements so as to orient the regulation of the sector. Consequently, the principles and criteria identified by the framework agreement cannot be considered to have the character of jus cogens.

3. The principles in question are the following:

Equitable and reasonable utilization of watercourses, as already decided by arbitration in the Lake Lanoux case. The equity and reasonable character must be evaluated and weighed in the light of a number of relevant factors, a non-exhaustive list of which is given in article 6;

Obligation not to cause significant harm. This principle establishes the need to preserve and protect international watercourses. The use of the term "significant" ("significant extent", art. 3, para. 2; "significant harm", art. 7; "significant adverse effect", art. 12) establishes an important link between certain provisions of the draft and the provisions of the Commission's draft articles on international liability for injurious consequences arising out of acts not prohibited by international law, indicating progress with regard to terminological and legislative harmonization. The concept of "significant harm" represents an effective compromise between the need to guarantee protection of the environment and the need to permit the free exercise of State sovereignty;

Protection of international watercourses and their environment in time of armed conflict. The relevant provisions of the 1949 Geneva codification and the 1977 Protocols, which are implicitly evoked in article 29, are applicable in this context;

Respect for existing regimes. A subordination clause is in effect in this regard (as can be deduced from article 3) which must, however, be reconstituted in the light of the observations in paragraph 1;

Cooperation between the States concerned (art. 8). This is a fundamental rule defining the regime established by the Convention. On the basis of the decisions of the International Court of Justice (the River Oder case, the Diversion of Water from the Meuse case, the Corfu Channel case, the Lake Lanoux arbitration and the Trail Smelter arbitration), it may be said that there is a tendency to limit the rights and duties of each State concerned, rather than identifying exclusive and unlimited rights or powers.

4. Cooperation does not imply a clear obligation to conclude agreements and thus does not prevent the States concerned from exercising certain rights even in the absence of a treaty.

5. Other important provisions set limits to the activity of the States concerned in the exercise of their subjective rights over a watercourse (articles 11-19), especially with regard to the protection, preservation and management of watercourses (articles 20-26). The first group of provisions imposes on the States concerned obligations which are essentially procedural in nature and limit the unilateral utilization of watercourses in the absence of a specific set of rules established by a regional agreement. The second group of provisions is aimed at satisfying the requirements essential to the protection of watercourse environments and thus consists basically of substantive provisions.

6. The draft as a whole is very satisfactory. Its provisions will help to affirm the principle of solidarity, which is assuming increasing importance in diplomatic practice and international jurisprudence and is being promoted by the International Law Commission, which is in the forefront of international legal thinking in this domain.

C. Comments and observations relating to specific articles

NIGER

[21 September 1996]

Article 7

The meaning of the words "watercourse States shall exercise due diligence to utilize an international watercourse ..." is not very clear. Does it refer to practical arrangements which the State or States concerned would make to ensure that any harm caused would not be significant?

Article 9, paragraph 3

The words "to process data and information in a manner which" should be replaced by the words "to process reliable data and information". Provision should be made for machinery to verify the reliability of the information.

Article 17

As a precaution, and in order to ensure that the consultations succeed, the implementation of any planned measure should be frozen.

Article 19, paragraph 1

The words "or other equally important interests" should be deleted, for they might give the "planning" State a pretext to undertake activities causing harm to other watercourse States without even asking for their views.

Article 26, paragraph 2

It would be desirable to list the forces of nature referred to in subparagraph (b).